



February 18, 2013

Dan Abeyta
Assistant Chief, NEPA Adjudications
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: **Comments for 2013 Nationwide Programmatic Agreements Annual Review**

Dear Mr. Abeyta,

On behalf of PCIA—The Wireless Infrastructure Association, I write to provide comments for the upcoming Nationwide Programmatic Agreements (“NPA”) Annual Review. PCIA and its membership commend the Federal Communications Commission (“FCC” or “Commission”), the Advisory Council on Historic Preservation (“ACHP”) and the National Conference of State Historic Preservation Officers (“NCSHPO”) for their ongoing efforts to revise and improve NPA processes.

In light of rapid advances in technology and national priorities for commercial and public safety broadband deployment, PCIA urges the Signatories to consider practical policies that will facilitate the use of small cells and existing infrastructure to meet important communications public policy goals.

I. The Signatories Should Utilize a Program Comment to Address the Twilight Tower Issue

PCIA believes the FCC, the NCSHPO, and the ACHP can, through concerted effort, free commercial, state, municipal and public safety towers from the regulatory limbo that precludes their use as platforms for thousands of collocations. “Twilight Towers” are towers built between March 16, 2001 and March 7, 2005, which were not specifically required to submit to a Section 106 review, and towers for which the Section 106 review documentation is simply unavailable.

PCIA suggests that the Signatories utilize a process contained in the ACHP’s rules called a Program Comment, a procedure that is both effective and well tested. The ACHP has entered into Program Comments on behalf of numerous agencies in the past, including the General Services Administration, the Department of Defense, the Department of the Navy, the Department of Transportation, the National Telecommunications and Information Administration, the Rural Utilities Service, and the Federal Emergency Management Agency.

Initiating a Program Comment would consist of two key steps, the first of which would be initiated by the FCC. The FCC would need to treat towers that are not Section 106 compliant as eligible for

collocation. The best way to accomplish this is by moving forward the Collocation Agreement's March 16, 2001 deadline. This is appropriate as the original concerns that motivated the establishment of the March 16, 2001 deadline are no longer relevant and there is a powerful countervailing public interest that would be furthered by such a decision.¹

If the Commission accepts that making these towers available for collocation is a laudable goal and if it wishes to avoid the cost and inefficiencies of doing so on a tower-by-tower basis, PCIA suggests that the FCC request the ACHP issue a Program Comment.

Once the FCC requests a Program Comment (or in the alternative, if the ACHP chooses to do so on its own initiative) the ACHP can initiate it. The mechanism spelled out in 36 CFR 800.14 (e) (1)-(5) is designed: a) to streamline federal preservation; and b) allow a federal agency to request the ACHP to comment on a category (which in this instance would be clearing for collocation a group of towers built during a specified time period) that does not require ad hoc treatment or cannot be done efficiently under existing rules.

It is our understanding that the Signatories have discussed utilizing the Program Comment process as the vehicle to address the Twilight Tower issue and that the process would be initiated by the Commission drafting a proposal for the ACHP to consider as well as inviting comment from the public (including Tribal comment). It is also PCIA's understanding that the Program Comment requires ACHP staff and Council review, public participation conducted by the federal agency requesting the comments, and consultation with SHPO/Tribal Historic Preservation Offices, Indian Tribes, and Native Hawaiian organizations.

We emphasize that the Program Comment can be accomplished without diluting the protections Section 106 affords by including two provisions that PCIA has previously proffered. First, the Program Comment should make it clear it does not foreclose the filing and consideration of a Section 106 objection to these towers. Second, collocations considered under a revised deadline should be subject to provisions of Section V of the Collocation Agreement, which is to say they would be eligible only if the tower was not located in or near (no closer than 250 feet) historic sites or districts eligible for the National Register, and were free from complaints as described in Section V(A)(1-4) of the Collocation Agreement.

¹ The same level of concern is no longer warranted. The March 16, 2001 deadline was established to discourage circumvention of the FCC's newly adopted preservation rules. The rules are now well known and followed by the vast majority of tower builders. The broader goals the Commission articulated – "most collocations are unlikely to affect historic properties, and therefore that it is consistent with the interest of historic preservation" – and the Congressional mandate to maximize the use of existing infrastructure should take precedence. Otherwise, our nation will be unnecessarily deprived of a vibrant commercial and public safety network that can only be fully realized by utilizing Twilight Towers for collocation. Further, over the years, many of these towers were transferred to other subsequent owners as a result of mergers or purchases by tower companies. As a result, many of these towers are no longer in the hands of the original owners. Thus, sanctioning current tower owners for the omissions of previous owners is misdirected as it will have no rehabilitative effect upon the original tower owners

Action here will further Presidential, Congressional, and FCC goals of promoting the expeditious build out of broadband network and further the goals of the most recent Congressional infrastructure build out directive — the Middle Class Tax Relief and Job Creation Act of 2012 (“TRA”). The TRA not only created a nationwide collocation-by-right policy to help expedite build out, it also authorized the construction of the First Responder Network Authority (“FirstNet”) to oversee the development of a nationwide public safety network. These laudable goals can be achieved while respecting the National Historic Preservation Act’s (“NHPA”) directive of protecting historic sites. PCIA has reached out to APCO, CTIA, the National Association of Broadcasters, the National Association of Telecommunications Officers and Advisers, and the National Association of Tower Erectors to seek their input on utilization of a Program Comment for Twilight Towers, and each have been supportive.

To maximize the benefits that the Program Comment will provide, it is essential that the Signatories make the Program Comment a top priority in 2013. If the efforts on the Program Comment lose momentum, FirstNet and commercial infrastructure providers will be deprived of the opportunity to use thousands of potential collocation sites located across the country. The net result is that build-out will unnecessarily be both slower and more costly. The first step, the drafting of a Program Comment and affording the public and the Tribes an opportunity to comment, should be concluded by the end of Q2 2013.

II. The Signatories Should Clarify the NPAs’ Application to Small Cell Technology

Wireless network technology is swiftly advancing to address the challenges of ubiquitous coverage, robust capacity, and widespread consumer adoption. While macrocell sites are effective for covering large geographic areas with relatively high capacity, service and infrastructure providers are turning to distributed antenna systems and small cell technologies to provide coverage in targeted locations – both indoors and outdoors – and moving radios closer to the subscriber for spectral efficiency and additional call and data-handling capacity in areas with concentrated demands for wireless services.

AT&T disclosed a three-year plan which included the use of 40,000 small cells and 1,000 DAS,² and Sprint is partnering with Alcatel-Lucent to deploy metrocells, called LightRadio, across its network.³ Macrocell sites, DAS networks and each of the various small cell technologies have unique characteristics and capacities that make them most suitable for deployment in specific environments and for resolving particular coverage and capacity challenges. In sum, to effectively serve the millions of wireless subscribers in the United States, a mix of technologies and infrastructure is required.

² Press Release, AT&T, Inc., AT&T to Invest \$14 Billion to Significantly Expand Wireless and Wireline Broadband Networks, Support Future IP Data Growth and New Services (Nov. 7, 2012), <http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=corporate|consumer>.

³ Press Release, Alcatel-Lucent, Sprint to leverage Alcatel-Lucent’s lightRadio to bring high-capacity 4G LTE mobile broadband coverage and speeds to busy public locations (Aug. 6, 2012), http://www3.alcatel-lucent.com/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLd4x3tXDUL8h2VAQAURh_Yw!!?LMSG_CABINET=Docs_and_Resource_Ctr&LMSG_CONTENT_FILE=News_Releases_2012/News_Article_002685.xml.

However, these technologies are subject to historic preservation policies that were constructed and adopted for macrocell sites. In recognition of the minimal impact these technologies have on historic properties and the environment, PCIA urges the Signatories to clarify the NPAs application to small cell solutions, including DAS. To this end, PCIA suggests that the Signatories consider the following approaches to facilitate the deployment of these important technologies:

- Clarification of Paragraph 63 of the 2004 Nationwide Programmatic Agreement Report and Order which discusses exclusions for attachments within the utility rights-of-way;⁴
- A declaration that DAS and small cell deployments are not federal undertakings and are thus excluded from Section 106 requirements under the NPA;
- A clarification of the term “tower” within the NPA noting that utility poles are not towers;
- Inclusion of DAS and small cell deployments within the “Note 1 exemption” of the FCC’s environmental rules;⁵ and
- FCC and ACHP utilization of the “exempted category” provision of the ACHP rules to craft an exclusion strategy for DAS and small cell deployments except in carefully defined areas such as National Historic Landmarks.⁶

⁴ “We do, however, adopt a limited exclusion, [. . .] for certain construction in or near communications and utility rights-of-way. Due to the increasing usage of wireless services and advances in technology, providers of certain types of service are increasingly finding it feasible to utilize antennas mounted on short structures, often 50 feet or less in height, that resemble telephone or utility poles. Where such structures will be located near existing similar poles, we find that the likelihood of an incremental adverse impact on historic properties is minimal. Moreover, it promotes historic preservation to encourage construction of such minimally intrusive facilities rather than larger, potentially more damaging structures. Therefore, the [NPA] excludes from Section 106 review facilities located in or within 50 feet of a right-of-way designated for communications towers or above-ground utility transmission or distribution lines, where the facility would not constitute a substantial increase in size over existing structures in the right-of-way in the vicinity of the proposed construction. *In re Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Report and Order*, 20 FCC Rcd 1073, ¶ 63 (Sept. 9, 2004).

⁵ “. . . aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others. The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged.” 47 C.F.R. § 1.1306 note 1. *See also* Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum, WC Docket No. 11-59, at 46-47 (July 17, 2011) (“Broadband Acceleration Comments”).

⁶ ACHP rules (36 C.F.R. § 800.14 (c)) provide for the exemptions of Section 106 undertakings when “[t]he potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse....”

We appreciate the opportunity to provide comment in this discussion and look forward to working with the Signatories of the NPAs on these issues. Please don't hesitate to contact me with any questions.

Best Regards,

A handwritten signature in blue ink, appearing to read 'JMC', with a long horizontal flourish extending to the right.

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